

Board Administration and Regulatory Coordination Unit

Division 3. Air Resources Board

Chapter 1. Air Resources Board

Subchapter 1.25. Administrative Procedures--Hearings

Article 6. Definition of Minor Violation and Guidelines for Issuance of Notice to Comply

§ 60093. Requirements.

For the purposes of sections 60090 through 60094 the following requirements shall apply to the issuance of, and response to, a Notice to Comply for a minor violation:

(a) Except as otherwise provided in this regulation, a Notice to Comply shall be the only means by which the Executive Officer shall cite a minor violation.

(b) A person who receives a Notice to Comply pursuant to this paragraph shall have the period specified from the date of the receipt of the Notice to Comply in which to achieve compliance. Within five (5) working days of achieving compliance, the person who received the Notice to Comply shall sign the Notice to Comply, stating that the person has complied with the Notice to Comply, and return it to the Executive Officer. A false statement that compliance has been achieved is a violation of this rule.

(1) If testing is required to determine compliance, and the testing cannot be conducted during the course of the inspection, the Executive Officer shall have a reasonable period of time to conduct the required testing.

(2) If, after the test results are available, the Executive Officer determines that the issuance of a Notice to Comply is warranted, the facility owner or operator shall be immediately notified in writing. If, after the test results are available, the Executive Officer determines that the issuance of a Notice of Violation is warranted, the facility owner or operator shall be notified in writing.

(c) If testing is not required, or if test results are received in a sufficiently timely manner, a single Notice to Comply shall be issued for all minor violations cited during the same inspection. The Notice to Comply shall separately list each cited minor violation and the manner in which it may be corrected.

(d) A Notice to Comply shall not be issued for any minor violation that is corrected immediately in the presence of the Executive Officer. Immediate compliance may be noted in the inspection report, but the person shall not be subject to any further enforcement action due to the corrected minor violation. Corrected minor violations may be used as evidence to show a pattern of neglect or disregard by a recalcitrant violator.

(e) The Executive Officer may require a person subject to a Notice to Comply to submit reasonable and necessary information to support a claim of compliance.

(f) Nothing in this regulation shall be construed as preventing the reinspection of a facility to ensure that the minor violation(s) cited in a Notice to Comply has been corrected.

(g) Notwithstanding any other provision of this regulation, if a person fails to comply with a Notice to Comply within the prescribed period, or if the Executive Officer determines that the circumstances surrounding a particular minor violation are such that immediate enforcement is warranted to prevent harm to any person(s) or to the environment, the Executive Officer may take any enforcement action authorized by law.

(h) Notwithstanding any other provision of this regulation, if the Executive Officer determines that the circumstances surrounding an otherwise minor violation are such that the assessment of a civil penalty is warranted or required by federal law, the Executive Officer shall make written findings that set forth the basis for this determination prior to, or concurrently with, issuance of a Notice of Violation.

(i) Nothing in this regulation restricts the power of a city attorney, district attorney, county counsel, or the Attorney General to bring any criminal proceeding otherwise authorized by law. Furthermore, nothing in this regulation prevents the Executive Officer from cooperating with, or participating in, such a proceeding.

(j) If a person disagrees with the alleged minor violation(s) cited in the Notice to Comply issued pursuant to this section, the person shall give written notice of appeal, including the reasons why the applicant believes a Notice to Comply is inappropriate, pursuant to the criteria set forth in this regulation, within 5 days of the citation. The written notice of appeal shall be sent to the Executive Officer of the Air Resources Board, P. O. Box 2815, Sacramento, CA 95812, who shall develop a process for reviewing and determining the disposition of the appeal.

NOTE: Authority cited: Sections 39600, 39601 and 39150(c), Health and Safety Code. Reference: Sections 39150-39153, Health and Safety Code.

REFERENCE